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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No. 623.

SWIFT & COMPANY, a Corporation,
Petitioner,

vs.

JOHN DOE et al. (Whose Names Are Otherwise Unknown to Plaintiff), NICHOLAS M. BLASSIE, AUGUST GIESEKE, Individually and as Representatives of LOCAL UNION NO. 88, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the St. Louis Court of Appeals, State of Missouri.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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CITATIONS TO OPINIONS BELOW.

The Citations to the Opinions Below are adequately set forth in the Petition for a Writ of Certiorari.

JURISDICTION.

The jurisdictional requirements are adequately set forth in the Petition for Writ of Certiorari.

QUESTIONS PRESENTED.

1. Where an Employer, whose business affects commerce within the meaning of the National Labor Relations Act as amended, files a suit in a state court to enjoin peaceful picketing by a labor union, alleging that the sole purpose of the picketing is to force the employer to force its employees to join the union and to directly force those same employees to join, and specifically alleges that such purposes are in violation of both the Federal Act and State Law, and where the Union alleges that its purpose is to organize those employees and to persuade them to join said union, through the influence of public opinion, does the State Court have jurisdiction to enjoin that picketing?

2. Where subsequent to the filing of the petition for state court injunctive relief, the employer files charges with the National Labor Relations Board, charging that the same picketing was for the purpose of forcing the employer to force its employees to join the Union and was in violation of Sections 8 (b) (1) (A) and 8 (b) (2) of the Federal Act, and where the General Counsel dismissed said charges, holding that such picketing was not violative of the Act, is the state court revested with jurisdiction?

3. Is the National Labor Relations Act, as amended, unconstitutional and violative of the Fifth and Fourteenth Amendments to the United States Constitution because it does not provide for review or appeal of the General Counsel's decision not to issue a complaint and to dismiss unfair labor practice charges?

STATUTES INVOLVED.

The statutory and constitutional provisions involved have been adequately set forth in the Petition for Writ of Certiorari.

STATEMENT OF THE CASE.

Respondents are officers and representatives of Local Union No. 88, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereafter referred to as "Local 88" or as "the Union", said union being a voluntary, unincorporated labor organization (Tr. 249). Petitioner Swift & Company, hereafter called "Swift", owns and operates a meat packing plant in St. Louis, Missouri, known as St. Louis Independent Packing Company, a division of Petitioner (Tr. 4), where it slaughters and processes livestock, selling its product at wholesale in an eleven-state area (Tr. 4; Tr. 96-7). Swift is engaged in interstate commerce and both it and its employees are subject to the provisions of the National Labor Relations Act, as amended, also referred to as the Labor-Management Relations Act, and portions of which are known as the "Taft-Hartley Act", said statutes being hereafter referred to as "the Federal Act" (Tr. 4, 27, 30).

Some time after January, 1952, Local 88 began a campaign to organize all of the white-collar salesmen of all of the meat packing houses in the St. Louis area (Tr. 96—147 to 149) and Swift employs 31 such salesmen (Tr. 96—116, 117). As part of its organizational strategy, Local 88 asked its members who work in meat markets and who deal with meat salesmen to try to organize those salesmen (Tr. 96—405 to 408), and hundreds of its members interviewed Swift's salesmen (Tr. 96—162). By August, 1953, all meat salesmen employed by local packers had joined Local 88, except those employed by Swift and Armour (R. 96—252).

On September 10, 1953, Local 88 began picketing at Swift's plant in connection with its organizational campaign (Tr. 96—31). Picket signs read "St. Louis Independent Packing House Salesmen Non-Union" (Tr. 96—43, 44). In

conjunction with said picketing, the Union distributed handbills urging public support for its organizational campaign by refusing to patronize Swift until the salesmen joined the Union, and explaining the effect on union employees of non-union competitors (Pltff's Ex. 6; Tr. 96—424). During the short time it took place, the picketing was entirely peaceful (Tr. 253, 257; Pet. App. E, p. 47).[1]

On September 11, 1953, the day after picketing began, Swift filed its suit for an injunction in the State court (Tr. 3), and on the same day the St. Louis Circuit Court issued an ex parte restraining order against such picketing (Tr. 15, 16). In its petition, Swift alleged that both it and its employees are subject to the Federal Act (Tr. 4); that Local 88 had been engaged in attempts to organize Swift's salesmen without success (Tr. 7); and that the sole purpose of the picketing was to force those salesmen to join Local 88, and to force Swift to coerce its salesmen to join that Union, all alleged to be in violation of the Federal Act and of Article I, Section 29 of the Missouri Constitution (Tr. 8, 9). In its Answer, Local 88 admitted the coverage of the Federal Act (Tr. 33); pleaded that its purpose in picketing was to publicize the salesmen's non-union status, intending thereby to persuade the salesmen to the desirability of unionism through the influence of public opinion (Tr. 39, 40); that the right to picket was guaranteed by the First and Fourteenth Amendments to the United States Constitution; and that the cause presented issues which were under the exclusive jurisdiction of the National Labor Relations Board, and that the courts of Missouri were without jurisdiction over the subject matter of the action (Tr. 38, 39).

On January 22, 1954, while the matter was still pending in the trial court, Swift filed unfair labor practice charges

[1] Reference is to Appendix E, printed on page 47 of Swift's Petition for Certiorari filed herein.

with the Board, alleging that Local 88 had violated Sections 8 (b) (4) (A) and 8 (b) (2) by the picketing here involved, which Swift charged was for the purpose of causing such economic hardship on Swift as to force it to compel its salesmen to join Local 88. It did not contain the additional allegation made in the petition in the state circuit court that the purpose of the picketing was to directly force and influence Swift's salesmen to join the Union (Pltff's Ex. 13;[2] Pet. App. A, p. 28). After carefully investigating the charges, the Regional Director refused to issue a complaint, holding that the charges allege activities that do not fall within the scope of Section 8 (b) (4) (A) or 8 (b) (2) (Pltff's Ex. 14). On appeal, the General Counsel sustained the dismissal, and in doing so concluded that both the legislative history of the Act and decisional precedent determine that the peaceful picketing here present was not violative of the Act (Pltff's Ex. 15; Pet. App. A, p. 28).

The cause was finally heard on the merits in October, 1956, at which time the trial court issued a permanent injunction against said picketing (Tr. 259 to 263), though finding it peaceful (Tr. 253, 254, 257) and for organizational purposes (Tr. 251, 257). Local 88 appealed to the Missouri Supreme Court, which transferred the case to the St. Louis Court of Appeals on the ground the latter court had original appellate jurisdiction (R. 56-67).

The St. Louis Court of Appeals reversed the Trial Court, holding that it lacked jurisdiction to issue the injunction, because Swift's State court petition specifically alleged that the Union's picketing violated the Taft-Hartley Act, and charged unfair labor practices reasonably bringing the controversy within the provisions of the Federal Act; that the Union's answer denied those charges; that an issue within the scope of the Federal Act was thus presented,

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[2] Petitioner here was plaintiff in the State Court suit.

and the state court was obliged to decline jurisdiction in deference to the Board, though picketing for the purpose alleged might be unlawful under state policy (Pet. App. A, p. 27). Among cases cited by the St. Louis Court of Appeals in support of its opinion were **Garner v. Teamsters, Chauffeurs & Helpers Local Union No. 776, A. F. L.**, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228; and **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468, 75 S. Ct. 480 (Pet. App. A, pp. 26, 27). The St. Louis Court of Appeals also held that the General Counsel's refusal to issue a complaint on Swift's unfair labor practice charges constituted an exercise of jurisdiction, and his dismissal of said charges did not revest jurisdiction in the State court (Pet. App. A, p. 29).

ARGUMENT.

A. The Denial of State Court Jurisdiction Under the Pleadings and Facts of This Case Is Not Contrary to International Union v. WERB, But Rather Is in Accord With That Case and With Controlling Decisions of This Court.

In presenting its "Reasons for Granting the Writ," Swift has relied chiefly on **International Union v. WERB**, 336 U. S. 245. It argues that the decision of the St. Louis Court of Appeals, denying Missouri courts jurisdiction to enjoin the peaceful picketing here present, is in conflict with **WERB**. That case has no application here. That case involved unlawful **conduct**, namely recurrent, unannounced work stoppages, which this Court held the National Labor Relations Board was without power to forbid, and which was "governable by the State or . . . entirely ungovernable." The **purpose** of such work stoppages was not an issue. Here, the conduct involved is peaceful picketing, which the Board unquestionably has the power to govern. This case involves only the purpose of that picketing, and whether the State has power to enjoin it.[3]

In its Petition for Writ of Certiorari, Swift fails to mention that, in its State court petition for injunctive relief, it affirmatively pleaded that the **sole** purpose of the Union's picketing was to force Swift's salesmen to join the Union, and to force Swift to in turn force those salesmen to join, and specifically alleged that such purpose was violative of the Labor-Management Relations Act

[3] The Union has always contended its picketing has a lawful purpose under Missouri law. The St. Louis Court of Appeals did not find the picketing here present violative of Missouri law or public policy, but merely that Swift so alleged (Pet App. A, p. 27). The Union pleaded that its purpose was to persuade Swift's salesmen to join (Tr. 39, 40), and the Trial Court found that such picketing was for organizational purposes (Tr. 251, 257).

(correctly termed the "National Labor Relations Act" as amended, and hereafter referred to as "the Federal Act") (Tr. 8, 9). The purpose thus alleged by Swift is the same as that pleaded by the employer and found by the Pennsylvania Courts in **Garner v. Teamsters Union**, 346 U. S. 485, 487—to "coerce petitioners (Garner) into compelling or influencing their employees to join the union." It is the same purpose as that found by the Florida Supreme Court (and held by that Court to be unlawful under Florida law), in the following cases, all reversed by this Court in **Hotel Employees Union v. Sax Enterprises, Inc., et al.**, ... U. S. ..., Jan. 12, 1959, Nos. 5 and 6, Oct. Term, 1958:

> **Sax Enterprises, Inc. v. Hotel Employees Union**, 80 So. 2d 602, 605;
>
> **Boca Raton Club, Inc. v. Hotel Employees Union**, 83 So. 2d 11, 16;
>
> **Fontainebleau Hotel Corp. v. Hotel Employees Union**, 92 So. 2d 415, 419.

In both **Garner** and **Sax** this Court held that the State courts had no jurisdiction to enjoin the picketing there involved (termed "organizational picketing" by this Court in Sax), though in none of those cases had the picketed employer contended, as Swift has here, that the picketing was violative of the Federal Act. Since Swift has affirmatively alleged unfair labor practices, this case is also squarely ruled by **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468, 481, wherein the moving party there had made similar charges of unfair labor practices. The **Anheuser-Busch** case is controlling here on still another point. In this case, after the ex parte state restraining order had been issued but before the hearing on the merits, Swift filed unfair labor practice charges with the Board, alleging that the picketing here present was for the purpose of causing such economic hardship on Swift as to force it to force its salesmen to join the union, in violation of Sections

8 (b) (1) (A) and 8 (b) (2) of the Federal Act. In filing those charges, Swift's pleading did not follow its State court petition in two particulars: (1) It restricted its charge of union coercion on Swift to one of causing economic hardship on Swift, whereas the charge was not so restrictive in its State court pleading; (2) It made no allegation, as it had in its State court petition, that the purpose of the picketing was also to directly force the salesmen to join the union. Thus, Swift, not having made all of the unfair labor practice charges it might have made, is in no better position than the employer in **Anheuser-Busch** (348 U. S. at 477-8).

Swift contends that the picketing here present is outside the scope of the Act, and claims that the General Counsel so found. That is simply not true. The Regional Director found that the charge which Swift filed "alleges activities that do not fall within the scope of 8 (b) (1) (A) or 8 (b) (2)" (Pltf's Ex. 14; Pet. App. A, p. 28), not that the picketing was outside the scope of the Act. The General Counsel, in affirming the dismissal of Swift's charges, mentioned nothing about "scope", but instead held that "both the legislative history of the Act and decisional precedent determine that * * * the peaceful picketing * * * (was) not violative of the Act" (Pltf's Ex. 15; Pet. App. A, p. 28). **Garner** (346 U. S. at 498-499) teaches that the touchstone for the displacement of state power over peaceful picketing is not a finding by the Board (or by the General Counsel on behalf of the Board) that it is or is not an unfair labor practice, but rather whether that activity is within the "area of labor combat" covered by the Federal Act.[4]

Swift also argues that the decision of the St. Louis Court of Appeals is erroneous, because it did not make a finding

[4] In *Weber v. Anheuser-Busch* (348 U. S. at 480) this Court expressed this same thought as follows: "Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces."

that the picketing was violative of the Act, nor did it make a finding that such picketing was protected by the Act. **Teamsters Union v. New York, New Haven & Hartford R. R. Co.**, 350 U. S. 155 at 161, holds that state courts have no jurisdiction to make such findings in cases such as this. **Retail Clerks v. J. J. Newberry Co.**, 352 U. S. 987, reversed 298 P. 2d 375, though that State court had found the picketing there present to be neither protected nor prohibited by the Federal Act.

Swift further argues that Art. I, Sec. 29, of the Missouri Constitution (which Swift alleged was being violated by the picketing) is in complete accord with Section 7 of the Federal Act, as a matter of substantive policy, and therefore there would be no conflict for Missouri to enjoin this picketing. The basis of the pre-emption doctrine announced in **Garner** was not to prevent possible conflicts of substantive law, but to prevent states from banning picketing which would be held lawful under the procedures set forth in the Federal Act, and vice versa. To sustain Swift's argument would be to permit that very conflict which **Garner** sought to prevent (346 U. S. at 499).

In **Youngdahl v. Rainfair, Inc.**, 355 U. S. 130, 137-8, this Court stated that generally the National Labor Relations Board has exclusive jurisdiction to enjoin peaceful organized activity. This was, of course, a reiteration of this Court's statement in **Garner** (346 U. S. at 499-500) that the policy of the Federal Act is not to condemn all picketing, but only that ascertained by its prescribed processes to fall within its prohibitions; otherwise, it was said, it is implicit in the Act that the public interest is served by the freedom of Labor to use the weapon of picketing. The prescribed processes of the Act have been exercised in this case, and no violation of the Federal Act has been found. The picketing is therefore sanctioned by the Federal Act, and the public interest is served by the freedom of this Union to continue to picket.

Finally, on this point, it should be noted that in its State court petition and in the charges filed with the Board, Swift contended that this picketing was violative of the Federal Act. Had the General Counsel issued a complaint, Swift would have strenuously argued that such picketing was violative of the Act, that the picketing was within the scope of the Act, and that the Board had jurisdiction to order it to cease. The clear answer to Swift's present position is that "the power to decide a matter can hardly be dependent on the way it is decided." **Bethlehem Steel Co. v. NYSLRB**, 330 U. S. 767, 775.

B. The Denial of Any Judicial Hearing on the Merits of This Case Presents No Substantial Federal Constitutional Question Under the Fifth and Fourteenth Amendments Not Heretofore Determined By This Court.

Under Points B and C of its "Reasons for Granting the Writ", Swift contends that it has been deprived of due process of law, on the theory that refusal of the General Counsel to issue a complaint denies Swift a "day in Court." It is difficult to understand how the most comprehensive kind of a "day in Court" would have aided Swift, for on pages 16 and 17 of its petition it argues most strenuously that the Union's picketing did not fall within any of the prohibitions of the Act! Respondents agree that the picketing was not violative of the Act, the General Counsel so found, and therefore the public interest is served by freedom of this Union to continue to picket.

There was no denial of due process in this case. Swift's charges were investigated as the Act provides, and the General Counsel, given final authority, on behalf of the Board, in respect to the issuance of complaints [Section 3 (d) of the Federal Act], determined that there was no violation of the Act. Swift contends that since there is no right of judicial review of this decision, there was no

judicial forum before whom it could obtain the remedy of injunction. This issue of alleged denial of due process was raised in this Court on the Motion for Rehearing filed in **Meat Cutters v. Fairlawn Meats, Inc.**, 353 U. S. 20, which motion was overruled (353 U. S. 948). In **Fairlawn**, this Court denied the state court jurisdiction to enjoin picketing, even though the General Counsel would not even consider the merits of unfair labor practice charges because the volume of business affecting interstate commerce in **Fairlawn** did not meet the dollar volume standards of the Board. Certainly, if due process was not denied in **Fairlawn**, where no consideration whatever was given to the merits of the charges, there can be no denial here, where the charges were accepted, jurisdiction was exercised, the charges were thoroughly investigated, and the merits were not only considered, but the General Counsel found no violation of the Act, a finding which Swift itself concedes to be correct. Swift's charge of denial of due process seems to be based upon the fact that it could not get injunctive relief. That is not a denial of due process. It simply was not entitled to one under existing Federal labor policy. If it has a complaint it is with Congress, not with the General Counsel, not with the Board, and certainly not with the courts.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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